

Private foundation nonexempt charitable trust. A nonexempt charitable trust described in section 4947(a)(1) of the Code that is a private foundation must terminate its private foundation status pursuant to section 507 before it can be excluded from such status under section 509(a)(3).

Advice has been requested whether a nonexempt charitable trust that is a private foundation must terminate its private foundation status pursuant to section 507 of the Internal Revenue Code of 1954 before it can be excluded from such status under section 509(a)(3).

The trust, which is described in section 4947(a)(1) of the Code, was created prior to October 9, 1969, for the purpose of distributing its income to a certain state university excluded from private foundation status under section 509(a)(1).

From the date of its creation, the trust failed to satisfy the requirements of section 509(a)(3) of the Code because of certain provisions in its trust instrument. However, the instrument was amended on January 1, 1973, in order to meet the requirements of section 509(a)(3). The trust subsequently requested a ruling pursuant to Rev. Proc. 72-50, 1972-2 C.B. 830, that it was not a private foundation.

Section 4947(a)(1) of the Code provides that, for purposes of part II of subchapter F of chapter 1 (other than sections 508(a), (b), and (c)) and for purposes of chapter 42, a trust that is not exempt from taxation under section 501(a), all of the unexpired interests in which are devoted to one or more of the purposes described in section 170(c)(2)(B), and for which a deduction was allowed under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522 (or the corresponding provisions of prior law), shall be treated as an organization described in section 501(c)(3).

Section 508(b) of the Code provides, with certain exceptions, that an organization described in section 501(c)(3) shall be presumed to be a private foundation unless it gives notice in the manner prescribed by regulations that it is not a private foundation. Rev. Proc. 72-50 provides procedures for obtaining determinations of foundation status under section 509(a)(3) by nonexempt charitable trusts described in section 4947(a)(1), which trusts are not subject to the foundation notice and presumption of status provisions of section 508(b).

Under section 4947(a)(1) of the Code, a nonexempt charitable trust is treated as an organization described in section 501(c)(3). Section 509(a) defines the term 'private foundation' to mean an organization described in section 501(c)(3), unless it meets the requirements of section 509(a)(1), (2), (3), or (4). Therefore, a nonexempt charitable trust is considered to be a

private foundation unless it meets the requirements of section 509(a)(1), (2), (3), or (4).

Section 509(b) of the Code provides that if an organization is a private foundation on October 9, 1969, or becomes a private foundation on any subsequent date, such organization shall be treated as a private foundation for all periods after October 9, 1969, or after such subsequent date, unless its status as such is terminated under section 507.

Since the presumption of private foundation status under section 508(b) of the Code does not apply in the case of a section 4947(a)(1) trust, such a trust that satisfied the requirements of section 509(a)(3) on October 9, 1969, and at all times thereafter will never have been a private foundation and may obtain a determination to this effect under Rev. Proc. 72-50.

In the instant case, however, the trust did not meet the requirements of section 509(a)(3) of the Code prior to the amendment of its trust instrument on January 1, 1973, and for that reason, on October 9, 1969, was a private foundation by virtue of sections 4947(a)(1) and 509(a). Thus, under section 509(b), the trust will continue to be a private foundation until it terminates its private foundation status under section 507.

Accordingly, the trust must terminate its private foundation status pursuant to section 507 of the Code before it can be excluded from such status under section 509(a)(3).